



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 02292-00

9 August 2000

LT [REDACTED] CHC USN RET

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 5 June 2000 with enclosure and 12 June 2000, copies of which are attached. The Board also considered your memorandum dated 12 July 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the advisory opinion dated 5 June 2000.

The Board duly noted the various recommendations to retire you in grade. However, they were not persuaded that your record was otherwise so meritorious that your service as a lieutenant commander should have been characterized as satisfactory, in spite of your misconduct. You allege a captain at the Bureau of Naval Personnel told you "If you submit your retirement request after the NJP [nonjudicial punishment], it will be accepted without further disciplinary or administrative action." The Board found this did not amount to a promise that you would be permitted to retire in grade. Finally, they were unable to find the Assistant Secretary of the Navy (Manpower and Reserve Affairs) did not review your record and your rebuttal before reaching his decision to retire you as a lieutenant.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



2292-00

DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

1920
Ser 834D/740
5 Jun 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-OOZCB

Subj: FORMER [REDACTED] CHC, USN [REDACTED]

Ref: (a) BCNR memo 5420 Pers-OOZCB of 08 May 00
(b) SECNAVINST 1920.6A

Encl: (1) CHNAVPERs ltr 1920 Pers-834D/Pers-822 Ser 0635
of 1 May 98
(2) BCNR Case File #02292-00 w/Microfiche Service Record

1. Reference (a) requested comments and recommendations regarding former LCDR [REDACTED] request for restoration of his retirement rank to O-4 and adjustment of his retirement pay. Former LCDR [REDACTED] will hereafter be referred to as "petitioner."

2. The petitioner has requested BCNR action based on the following issues:

a. He alleges that he was offered an option of retiring in paygrade prior to resolution of his case at NJP, and that offer was later rescinded.

b. He alleges that he was again offered an option of retiring in paygrade when he was notified of administrative processing, and that offer was later rescinded.

c. He alleges that informal conversation between a member of his Board of Inquiry and an observer is proof that his constitutional and procedural rights were violated.

d. He alleges that his performance as an O-4 was exemplary, excepting the single incident of NJP, and provided sufficient cause to come to a determination that he should be retired in paygrade.

3. The action requested by the petitioner should be denied for the following reasons, which correspond to the issues presented in paragraph 2.

a. PERS-8 does not become involved in a case until the

Subj: FORMER [REDACTED] CHC, USN, [REDACTED]

report of NJP is received. Even if such an offer had been tendered, it would only have been in the form of informal guidance given to the chaplain detailer. PERS-8 has no authority to resolve cases prior to review by the Show Cause Authority. In this case, PERS-8 actually made a recommendation to the Show Cause Authority that the retirement in paygrade be granted, however, the Show Cause Authority elected to send the petitioner to a Board of Inquiry for retirement grade determination.

b. His notification of administrative processing made no mention of retirement in paygrade. It advised him that he could submit a retirement request in accordance with reference (b). Since his service as an O-4 did not meet the criteria of reference (b), enclosure (6), guidelines on retirement grade (due to his significant misconduct), it was disapproved. The ASN(M&RA) was made aware of his request for retirement in paygrade, but chose to follow the recommendations of the Board of Inquiry and the Board of Review, which both recommended retirement in reduced paygrade.

c. In his rebuttal to the Board of Inquiry, the petitioner made a statement nearly identical to the statement submitted to BCNR. The ASN(M&RA) was aware of his issues with alleged violations of his constitutional and procedural rights, and still chose to follow the recommendations of the Board of Inquiry and the Board of Review, which both recommended retirement in reduced paygrade.

d. In his rebuttal to the Board of Inquiry, the petitioner made a statement nearly identical to the statement submitted to BCNR. The Board of Inquiry and the Board of Review specifically evaluated his performance as an O-4 and still recommended retirement in reduced paygrade. The ASN(M&RA) was aware of his performance as an O-4 and still elected to approve his retirement in reduced paygrade.

4. Note that enclosure (1) contains substantially the same information as presented to BCNR in enclosure (2). Since no new information has been provided, overturn of the ASN's decision would be inappropriate.

5. PERS-834 Point of Contact is LO [REDACTED]

[REDACTED]
[REDACTED]
CDR, U.S. Navy
Head, Officer Performance Branch



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

2292-00

IN REPLY REFER TO

1920

Pers-834D/Pers-822

Ser 0635

1 May 98

From: Chief of Naval Personnel
To: Secretary of the Navy

Subj: LCDR [REDACTED] CHC, USN, [REDACTED]

Ref: (a) COMCAB Eastern Area ltr 1621 17/10 of 1 Oct 97
(b) CHNAVPERs ltr 1920 Pers-834D/Pers-822 Ser 2017
of 24 Nov 97
(c) CAPT [REDACTED] 1920 MJO/R of 2 Mar 98 w/ends
(d) CAPT [REDACTED] 1920 Pers-834D/Pers-822 Ser 0611
of 24 Apr 98

1. Synopsis. [REDACTED] is an active Regular Chaplain Corps officer with twenty two years, ten months commissioned service. LCDR [REDACTED] has been recommended for retirement as an O-3 by a Board of Inquiry (BOI) and Board of Review (BOR) that considered his case.

2. Discussion

a. Reference (a) reported [REDACTED] received nonjudicial punishment on 19 September 1997 for violations of the UCMJ, Article 92, dereliction of duty; and Article 133, conduct unbecoming an officer. Specifically, [REDACTED] who is married, became romantically involved with the wife of an enlisted member while the couple was receiving marriage counseling from him. Although [REDACTED] pled not guilty to a charge of adultery, the woman claimed the two had sex on at least two occasions. [REDACTED] was awarded a punitive letter of reprimand, restriction from meeting with the woman unless legally required, and forfeiture of \$2000.00 pay per month for two months (\$1500.00 pay per month suspended for two months). Commander, Marine Corps Air Bases, Eastern Area, recommended [REDACTED] be required to show cause for retention in the Naval Service. On 19 September 1997, [REDACTED] requested to retire in his current paygrade effective 28 February 1998. Commanding Officer, Marine Corps Air Station and Commander, Marine Corps Air Bases, Eastern Area recommended approving his request; however, Commander, U.S. Marine Corps Forces, Atlantic recommended [REDACTED] be required to show cause for retirement grade determination.

Subj: LCDR [REDACTED] HC, USN, [REDACTED]

b. Reference (b) notified [REDACTED] of the initiation of administrative show cause proceedings. Reference (c) is the Report of the BOI that considered his case and recommended [REDACTED] be retired as an O-3.

c. In rebuttal, [REDACTED] raised objections to the recommendations and the report of the BOI. He points out that informal post-inquiry conversations between the senior member of the Board and the Director of the Presbyterian Council for Chaplains and Military Personnel indicated the recommendations of the BOI might have been different if he had made an oral statement during the proceedings. [REDACTED] believes this raises a strong inference that the BOI not only considered his election to remain silent during their deliberations, but also held his silence against him. Additionally, [REDACTED] felt the BOI's recommendation to retire him at the next inferior grade to be improper and unjust. He adds that it is evident the BOI did not give proper consideration to his record and service as a LCDR. [REDACTED] then requested a new BOI be convened to consider his case.

d. As [REDACTED] points out, the conversations following the BOI were informal and can only be viewed as such. His belief that the BOI held his silence against him is speculation and without merit. Retiring [REDACTED] in the next inferior paygrade is not only just, but more than appropriate. Had [REDACTED] not been retirement eligible, he would have been recommended for separation with an Other Than Honorable discharge. [REDACTED] was responsible for providing professional marriage counseling to a couple in need of assistance. Instead, he preyed on their vulnerability to satisfy his own desires. [REDACTED] should consider himself fortunate to be given the opportunity to retire at all.

e. Reference (d) is the report of the BOR which convened on 24 April 1998 and, by a vote of 3 to 0, concurred with the recommendation of the BOI that [REDACTED] should be retired as an O-3.

Subj: LCDR [REDACTED] CHC, USN [REDACTED]

3. Recommendation. Approve the recommendations of the BOI and BOR who considered [REDACTED]'s case and retire him as an O-3. Your approval of this letter will affect the recommended action. The separation code will be SNC (unacceptable conduct).

[REDACTED]
Rear Admiral, U.S. Navy
Deputy Chief of Naval Personnel

.. Approve/Disapprove MAY 12 1998

[REDACTED]
[REDACTED]
[REDACTED]
Ass [REDACTED]
(M [REDACTED])



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2292-00
1811
PERS-822
12 Jun 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: COMMENTS AND RECOMMENDATION ICO [REDACTED]

Ref: (a) BUPERS memo 5420 PERS-00ZCB of 9 Jun 00
(b) BUPERS ltr 1920 PERS-834D/PERS-822 Ser 0635 of 1 May 98

1. Reference (a) request comments and recommendations in subject officer's case. Specifically, Petitioner requests reinstatement of his rank of LCDR.

2. Per reference (b), ASN (M&RA) approved retirement for LCDR [REDACTED] the grade of LT and separation code of SNC (unacceptable conduct). PERS-822 issued retirement orders as approved by ASN (M&RA).

3. Based on the information above, we recommend disapproval of LT [REDACTED] request for reinstatement to LCDR. Enclosure (2) is returned.

[REDACTED]
Branch Head, Officer Retirements